

**DEPARTMENT OF STATE REVENUE**

04960488.SLF

**FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER 96-0488 ST**

**Sales And Use Tax**

**For Tax Periods: 1991 Through 1994**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**ISSUES**

**1. Public Transportation Exemption**

**Authority:** IC 6-2.5-5-27

Taxpayer protests the assessment of sales and use tax on office equipment and supplies.

**2. Sales and Use Tax Corrections**

**Authority:** IC 6-2.5-5-27

Taxpayer protests the assessment of sales and use tax on certain items on which it already paid sales tax or sales tax was collected twice.

**3. Sales and Use Tax Delivery Charges**

**Authority:** 45 I.A.C. 2.2-4-3 (b)(2) & (3)

Taxpayer protests the assessment of sales tax on delivery and labor charges.

**4. Sales and Use Tax Expense Item Projection**

**Authority:** IC 6-2.5-5-27

Taxpayer protests the assessment of sales tax based on an expense item projection that did not include all sample data.

**5. Tax Administration – Negligence Penalty**

**Authority:** IC 6-8.1-10-2(a) & (d)

Taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

Taxpayer provides public transportation services by transporting bulk commodities such as coal, grain, liquids, steel products, and ores on its some 3,200 barges throughout the Inland Waterway and Gulf Coastal Waterway systems. Taxpayer's public transportation operations are located in its office building on the Ohio River in Jeffersonville, Indiana. In this building Taxpayer conducts its business operations such as dispatching, monitoring, and controlling its boats, barges and employees, and performs administrative functions such as handling insurance, and financial matters and producing transportation routing, rates, and schedules. The Department audited taxpayer in 1995-96 for the tax years 1991, 1992, 1993 and 1994. The Department's auditor assessed sales-use tax on several items the taxpayer purchased, including computer equipment and materials used to repair and maintain taxpayer's office building. Taxpayer, by its attorney, timely filed a protest to the assessment raising several issues for review. A hearing was held and Letter of Findings issued. Taxpayer, by its attorney, timely filed a request for rehearing of several issues. The Department granted the request for rehearing.

**1. Public Transportation Exemption**

**DISCUSSION**

In the original hearing, Taxpayer argued that certain purchases of office equipment and supplies were exempt under the public transportation exception to state sales and use tax. IC 6-2.5-5-27. It concerned Taxpayer that the Letter of Findings referred to the office equipment as computer and communication equipment. The decision regarding the office equipment and supplies included the computer equipment, communication equipment, desks, office equipment and miscellaneous office supplies and equipment. It was the intent of the original Letter of Findings to include all the listed forms of office and equipment supplies under the general heading of office equipment and supplies even though only computer and communication equipment were listed specifically listed.

Taxpayer also renewed its protest to the decision concerning the exemption of the office equipment and supplies. The statute exempts office equipment and supplies that are used to provide public transportation, but it does not allow exemption for the sales functions of Taxpayer's business. To determine the taxable amount, a ratio of sales personnel to all personnel was developed. Taxpayer contended in the original hearing that since pursuant to that ratio over 90% of the items were qualified for the exemption and that was the predominant usage, then the entire amount should be exempted from the tax. The Hearing Officer found that 91.9% of the equipment qualified for exemption under the public transportation exception to state sales and use tax. The remaining 8.9% of the equipment did not qualify for exemption.

## **FINDING**

Office equipment and supplies in this context include communication equipment, computer equipment, desks, office equipment and miscellaneous office supplies and equipment. Taxpayer's protest is sustained as to 91.9% of the tax assessed on office equipment and supplies.

### **2. Sales and Use Tax Corrections**

## **DISCUSSION**

Taxpayer's second point of protest concerns issues three and four of the original Letter of Findings. The Hearing Officer found that equity requires that the Department collect only the tax to which it is entitled. The items in issue three were all assessed sales and use tax twice. Taxpayer contends that they were not subject to sales and use tax at all and that both assessments should be removed. Taxpayer contends that the items in issue four were not subject to sales and use tax. The items under contention in these points of protest are exempt for one of three reasons. Either the item qualifies for exemption because tax was paid at the time of purchase such as the Muzak invoice. Some items qualify for exemption pursuant to their direct use in providing public transportation pursuant to IC 6-2.5-5-27. An example would be barge maintenance equipment. Finally, many of the tax assessments are on separately stated and bargained for freight charges such as shipping of computer printers. At the rehearing, Taxpayer presented worksheets and invoices to substantiate its contention that these items were not subject to sales and use tax.

## **FINDING**

This point of Taxpayer's protest is sustained subject to review of the worksheets and invoices by the Audit division.

### **3. Sales and Use Tax Delivery Charges**

## **DISCUSSION**

Taxpayer protests the assessment of additional sales and use tax on separately stated delivery charges. Taxpayer contends that these items are exempt from sales and use tax pursuant to 45 I.A.C. 2.2-4-3(b)(2) and (3) which states that separately stated delivery charges are exempt from sales and use tax if the items are shipped F.O.B. origin or do not specify an F.O.B. term. Taxpayer presented invoices at the rehearing to demonstrate that the contested assessments are on separately stated delivery charges on items shipped F.O.B. origin or F.O.B. with no specific delivery term. These charges would qualify for exemption from the sales and use tax.

## **FINDING**

This point of protest is sustained subject to verification by the Audit Division.

### **4. Sales and Use Tax Expense Item Projection**

Taxpayer protests the assessment of sales and use tax that was based on an expense item projection. Specifically, Taxpayer's protest is based on four factually based arguments. First the auditor failed to include all invoices in the test month account totals. Second, the auditor asserted that certain accounts in the sample month had no activity and assigned to those accounts an average taxable percentage. According to Taxpayer, however, the accounts did have activity in the sample month. Third, Taxpayer claims that the audit report did not include any actual data for 1991 or 1992 in the expense item projection. The auditor's reason for not including the data was that it had been destroyed. Taxpayer has produced the data. Finally, the expense item projection included, as taxable, all items that taxpayer protests above. Because Taxpayer's protest was sustained in several areas in the original hearing and the rehearing and all the data is available, the expense item projection should be recalculated.

## **FINDING**

Taxpayer's protest is sustained.

### **5. Tax Administration-Negligence Penalty**

## **DISCUSSION**

Pursuant to IC 6-8.1-10-2(a)(3), the Department may impose penalties equaling ten per cent of the sales tax liability for negligence. IC 6-8.1-10-2(d) further states that the department shall waive the penalty if the deficiency was not due to willful neglect. In this case most of Taxpayer's protests to the assessment were sustained. It is clear that Taxpayer is acting as the reasonable man attempting to pay the correct amount of sales and use taxes to the state. There is no showing that the deficiency was due to willful neglect on the part of Taxpayer.

## **FINDING**

This point of Taxpayer's protest is sustained.